

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

OTR TRANSPORTATION, INC., an  
Illinois corporation,

Plaintiff,

v.

DATA INTERFUSE, LLC, a Virginia  
limited liability company, and  
JOHN LOVEGROVE, an individual,

Defendants.

Docket No. 21 C 3415

Chicago, Illinois  
October 1, 2021  
2:00 p.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS - Status  
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff:

MR. THOMAS PIERCE YARDLEY JR.  
MS. CHRISTINE R. WALSH  
Robbins Salomon & Patt, Ltd.  
180 North LaSalle Street, Suite 3300  
Chicago, Illinois 60601

For the Defendants:

MR. PAUL H. TZUR  
MR. ANDREW SCHRAG  
Blank Rome LLP  
444 West Lake Street, Suite 1650  
Chicago, Illinois 60606

MR. S. GREGORY HERRMAN  
Blank Rome LLP  
1825 Eye Street NW  
Washington, D.C. 20006

ELIA E. CARRIÓN  
Official Court Reporter  
United States District Court  
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1 (Proceedings had telephonically:)

2 THE COURT: Emily, please call the case.

3 THE CLERK: All right. This is Case No. 21 CV 3415,  
4 OTR Transportation v. Data Interfuse, LLC.

5 Could I please have the attorney speaking on behalf  
6 of plaintiff state their name.

7 MR. YARDLEY: Tom Yardley, Your Honor.

8 MS. WALSH: Christine Walsh on behalf of plaintiff.

9 THE CLERK: And on behalf of the defendants, please.

10 MR. TZUR: Good afternoon, Your Honor. Paul Tzur  
11 from Blank Rome LLP representing the defendants, Data  
12 Interfuse and John Lovegrove. And with me on the phone this  
13 afternoon I've got colleagues of mine Andrew Schrag and  
14 Greg Herrman.

15 THE COURT: Okay. All right. Thank you all for  
16 coming on.

17 We have a plaintiff's motion -- or objection to  
18 Scott Herrman's motion for leave to file *pro hac vice*; I have  
19 defendants' reply, or response to that; and, finally, I have  
20 defendants' motion for all reasonable attorneys' fees and  
21 expenses under Rule 11.

22 I've never had this happen in a case before, before  
23 you really even get started, so I'm kind of surprised to see  
24 the motion practice that's already occurred.

25 I don't view what Mr. Herrman said, as I read it, as

1 a threat. That's an adjective or adverb, whatever, but I  
2 don't view it as a threat when he says that if a complaint was  
3 filed without proper evidentiary support he'd seek sanctions  
4 under Rule 11. That's an unremarkable statement, in my mind.

5           Maybe the tone of it was something that gave offense  
6 to the plaintiff, maybe the manner in which it was said gave  
7 offense, but the factual statement of what is related in  
8 the -- in the plaintiff's motion -- and I'm sure there are  
9 inevitably going to be factual disputes about how -- what was  
10 said that the defendants may have, but even taking it in the  
11 language of what the plaintiff said defendants' counsel said,  
12 I don't view that as a threat.

13           It's not an attempt to threaten disciplinary action  
14 in order to get an advantage in litigation. It's just simply  
15 the unremarkable statement that unsupported allegations in a  
16 complaint make the party -- renders the party that makes them  
17 subject to potential Rule 11 sanctions.

18           And I'm going to grant the motion for *pro hac vice*.  
19 But before I do that, I'm going to give the plaintiff a chance  
20 to withdraw their motion if they like. It's a very -- if they  
21 want. It's a very serious thing to accuse someone of an  
22 ethical violation. It carries with it a number of reporting  
23 obligations to different authorities. If the person who has  
24 an ethical violation lodged against them ever wants to apply  
25 to be a judge somewhere or some other type of public official,

1 it's something they have to report.

2 I can rule on this, and I will tell you as a matter  
3 of advisory opinion, I'm going to grant it, but I'll give the  
4 plaintiff a chance to withdraw it in light of what I said.

5 Do you wish to withdraw it?

6 MR. YARDLEY: We will -- we will withdraw it,  
7 Your Honor, but I would at least like to give you the full  
8 facts of what happened, if you're willing to listen.

9 THE COURT: I'm, of course, willing to listen.  
10 Go ahead.

11 MR. YARDLEY: The problem we've run into, Your Honor,  
12 is that it wasn't a threat -- it wasn't a statement the first  
13 time. The first time he made the statement he clearly said  
14 that if you filed this without evidentiary basis, we're going  
15 to file Rule 11 sanctions against you.

16 THE COURT: Okay.

17 MR. YARDLEY: We responded -- but we responded by  
18 saying we have an expert report from a nationally-known  
19 forensic expert that charges \$50,000 to provide the basis for  
20 our complaint. And I would have thought at that point it's  
21 fairly clear that we have -- at least in my experience, I  
22 don't think I can ever remember having an expert report before  
23 I filed a complaint. I made it abundantly clear. And after  
24 that, every single time I spoke to Mr. Herrman, he continued  
25 to make that statement.

1           So it wasn't the first time that bothered me and it  
2 wasn't the second time that bothered me. It was while we're  
3 trying to discuss very simple evidentiary issues of how we're  
4 going to deal with discovery that I -- I was constantly being  
5 reminded, after telling them that I have this expert report,  
6 which I thought would have shut that issue down immediately,  
7 but it didn't, and it came up every conversation we had.  
8 That's the context of where it becomes a threat in my mind.

9           THE COURT: Okay. Well, I understand your  
10 irritation. I understand why -- the context, but it's a bad  
11 way to start the case. I'm not throwing dispersions on either  
12 side. I think -- and I don't need a response from defendants.

13           You are withdrawing your motion -- your objection to  
14 this motion for leave to appear *pro hac vice*?

15           MR. YARDLEY: Yes, we are.

16           THE COURT: All right. That'll be shown as  
17 withdrawn. The motion for attorneys' fees will be denied.  
18 I'm not going to start this case with you all fighting about  
19 this and having attorneys' fees assessed against one side or  
20 the other. The fact that it was withdrawn means that  
21 Mr. Herrman no longer has this as a mark on his disciplinary  
22 record, even if I were to grant it over objection, and you  
23 both can proceed.

24           I'm going to refer discovery in this case to the  
25 magistrate judge. I believe it's Judge Gilbert, but you can

1 correct me. It'll go to the right magistrate judge one way or  
2 the other, whoever was assigned to the case.

3 MR. YARDLEY: You're right, Judge; it is  
4 Judge Gilbert.

5 THE COURT: Okay. Very good. And I know there was a  
6 status report due. I told my courtroom deputy to waive that  
7 at this time because there's no point filing a status report  
8 based on my rules when Judge Gilbert might have his own rules.  
9 I just don't know what they are. But we'll refer discovery to  
10 Judge Gilbert. He will likely ask for some type of report  
11 about your proposed discovery schedule going forward.

12 And I will see you all at the time -- unless it's on  
13 a dispositive issue, of course, which I'd have to deal with,  
14 otherwise, Judge Gilbert will deal with all deadlines for  
15 discovery. And when you're done with discovery, you'll be  
16 back in front of me and we'll talk about whether the case can  
17 settle or whether it can go through summary judgment or  
18 whether we ought to set a trial.

19 I will note, and I hope Judge Gilbert raises this  
20 with you, that since this is not the only lawsuit you've got  
21 between you -- there's a case in Virginia -- whenever  
22 businesses sue each other in two different jurisdictions,  
23 there's often an opportunity -- maybe not an obligation -- but  
24 an opportunity to try and resolve it both on a business level  
25 so that the expenses for the companies are not huge and you

1 can both go forward -- go your separate ways without incurring  
2 attorneys' fees -- additional attorneys' fees. But I'll leave  
3 that to Judge Gilbert who's very experienced.

4 Anything else from plaintiff at this time?

5 MR. YARDLEY: No, Your Honor.

6 MS. WALSH: No, Your Honor.

7 THE COURT: And from defendants?

8 MR. TZUR: Nothing, Your Honor.

9 THE COURT: All right. Thank you all. Bye-bye.

10 (Proceedings concluded at 2:08 p.m.)

11 CERTIFICATE

12 I certify that the foregoing is a correct transcript from  
13 the record of proceedings in the above-entitled matter.

14 /s/ Elia E. Carrión 28th day of November, 2021

15 Elia E. Carrión  
16 Official Court Reporter

Date